

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**JON CHRISTOPHER EVANS
AND JOINTLY ADMINISTERED
RELATED CASES**

Case No. 09-03763-NPO

DEBTORS

Chapter 7

G&B INVESTMENTS, INC.

PLAINTIFF

VS.

ADV. PROC. NO. 10-00040-NPO

**DEREK A. HENDERSON, TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
JOHN CHRISTOPHER EVANS, ET AL**

DEFENDANTS

**TITLE COMPANIES' MOTION FOR DECLATORY JUDGMENT
ON CONTRACTUAL CLAIMS ASSERTED BY G&B INVESTMENTS, INC.**

Pursuant to Rule 7001(9) of the Bankruptcy Rules of Civil Procedure and 28 U.S.C. §2201(a), Mississippi Valley Title Insurance Company and Old Republic National Title Insurance Company ("Title Companies") respectfully move this Court for declaratory judgment on contractual claims asserted by G&B Investments, Inc., ("G&B") for the following reasons:

1. G&B recently asserted a claim under an owner's title insurance policy issued to G&B by the Title Companies. Through this motion, the Title Companies seek a declaratory judgment from the Court that the owner's title insurance policy does not provide coverage based on the established facts.

2. The owner's title insurance policy is an agreement that the Title Companies will insure that G&B possessed clear and marketable title as of the effective date of the owner's title

insurance policy. Under the policy, the dispositive question is whether G&B possessed clear and marketable title as of the effective date in the owner's policy: July 22, 2008.

3. G&B admits that it possessed clear and marketable title as of July 22, 2008. As a result, G&B does not have a valid breach of contract claim. The Title Companies have fully satisfied their obligations under the owner's title insurance policy issued to G&B and did not breach the policy.

4. The Title Companies also seek a declaratory judgment that they have neither breached their duty of good faith and fair dealing nor acted in bad faith. Mississippi law makes clear that a party to a contract does not breach its duty of good faith and fair dealing when it complies with the terms of the contract. Additionally, Mississippi law makes clear that request a declaratory judgment from the Court is not bad faith. This motion is filed with the Court a mere two months after G&B presented its claim under the owner's title insurance policy for the first time.

5. The Title Companies incorporate into this Motion the reasons, arguments, and law addressed in its Memorandum in Support, which is filed separately.

6. In addition, the Title Companies provide the following exhibits in support:

Exhibit A – *Contract of Sale between G&B and 463 Development Company, LLC;*

Exhibit B – *Assignment from 463 Development Company, LLC, and Hanover Investments, LLC;*

Exhibit C – *Excerpts from Transcript of G&B's Examination Under Oath;*

Exhibit D – *Owner's Title Insurance Policy issued by the Title Companies to G&B;*

Exhibit E – *Excerpts from Transcript of G&B's Rule 30(b)(6) Deposition;*

Exhibit F – *Deed of Trust executed by Town Park in favor of Merchants & Farmers Bank;*

Exhibit G – *Deed of Trust executed by White Oaks in favor of Bank of Forest;*

Exhibit H – *Deed of Trust executed by Twinbrook Run in favor of Heritage Bank;*
and

Exhibit I – *Warranty Deed from G&B to Hanover.*

FOR THESE REASONS, the Title Companies respectfully request that this Court grant their motion for declaratory judgment, award expenses and attorneys' fees to Title Companies, and grant any additional relief deemed appropriate by this Court.

RESPECTFULLY SUBMITTED, this the 22nd day of December 2010.

MISSISSIPPI VALLEY TITLE INSURANCE
COMPANY and OLD REPUBLIC TITLE
INSURANCE COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing has been served by electronic filing through the ECF System, which provides electronic notice to all parties of record, including the following:

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This the 22nd day of December, 2010.

/s/ M. Scott Jones
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